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# THE MONIST.

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## OUGHT THE UNITED STATES SENATE TO BE ABOLISHED?<sup>1</sup>

WHEN the gigantic intellect of Napoleon began to stagger and reel under the weight of his successes, he is said to have boasted that he would make his dynasty the oldest in Europe. In 1787 this Republic was the youngest State. To-day it is in a most essential respect by far the oldest: its constitution—if the word be understood in its strict and proper sense—antedates by many years all other constitutions. If this had been foretold by a prophet, when on the 25th of May, eleven days after the appointed time, the “convention of delegates . . . for the sole and express purpose of revising the Articles of Confederation” could at last proceed to business by organising itself, it would have appeared a wilder prediction than the mad threat of the demoniacal Corsican. “We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride, or degrade the character of an independent nation, which we do not experience . . . what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?” Thus Hamilton characterised in the *Federalist* (No. XV, Dawson’s edit.) the actual condition of things, while the people held the adoption or re-

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<sup>1</sup> Oration delivered on the Fourth of July at the University of Chicago.

jection of the work of the federal convention under advisement, and Washington endorsed again and again this harsh judgment to its fullest extent. Luther Martin, however, was of opinion that the people would seal their own doom and that of their posterity by accepting the proffered gift of the convention. He wrote : "I would reduce myself to indigence and poverty ; and those who are dearer to me than my own existence I would intrust to the care and protection of that Providence who hath so kindly protected myself,—if on *those terms only* I could procure my country to reject those chains which are forged for it." (*Elliot*, I, 389.) His warning was not heeded. The people deliberately fastened the chains to their limbs,—they and their posterity have worn them one hundred and five years glorying in them the longer the more,—the chains, in spite of all their alleged and real flaws, have withstood the strain of the greatest civil war recorded in history and grown infinitely stronger than before,—they have been worked as a drag-net hauling to a thinly settled coast-strip a whole continent,—and in wearing them and by wearing them, the people have pushed themselves ever more vigorously into the very front rank of the leading nations of the earth as to everything that renders life worth living for. Surely, the people of the United States have a right to say, and the nations of the earth ought to say with them : would that such chains had been forged more frequently. If the people of the United States ever cease to say so—to say so not merely with their lips, but from the very depth of their hearts and with full consciousness of its whole import, they will have forfeited the right to celebrate the Fourth of July. On the Fourth of July their forefathers merely proclaimed their right to be free and independent and the intention to assert the right ; and by a seven year's war they vindicated this step to the extent of proving their ability to conquer independence. This, however, was only the first and the easier half of the task they had assumed. Independent and free are not equivalent terms, and unless they proved themselves capable of becoming and remaining free, their making themselves independent was a wrong done to themselves. The prerequisite of this proof, however, was a much harder and grander victory—a victory over them-

selves. This they achieved in the adoption of the Constitution. Therefore only by the adoption of the Constitution was the Fourth of July rendered a festive day for humankind.

That the handful of men at Philadelphia, anxiously devising behind closed doors the means to infuse enduring vitality into the federative Republic, must forever be counted among the greatest law-givers known to history, is therefore no more an arguable question. In the nature of things, there is but one adequate test of constitutions—success. Their work has stood this test over a century. Nothing can undo this fact, and consequently, whatever the future may have in store for this Republic, their names are indelibly inscribed in the imperishable plates of history as sages and benefactors of mankind. But let us beware lest justice to them mislead us into injustice towards others. They could only devise the proper means for realising the great possibilities offered by the circumstances. Unless the people had sufficient discernment to see that they had planned wisely, and had, moreover, all the qualities required for applying the proper means in the proper manner, they had labored in vain. The realisation of the possibilities depended altogether on the people. This is a trite truth, but a truth of tremendous import. To lose sight of it, is to vow the country to perdition. There is no surer way to bring it about than to erect the Constitution into a fetish, expecting from it safety and prosperity so long as incense is offered to it. Though the Constitution is a master-work, in itself it is of no more use than an armor wrought of gossamer. Only so far as the people vitalise it in the proper manner by what they do and by what they abstain from doing, is it a guaranty that the future will correspond to the past. The history of the Union during the years preceding the adoption of the Constitution is, however, irrefutable proof that it will not do to invert the proposition. It would be midsummer madness to assert that as long as the people are all right, it is indifferent what their Constitution is. While it is the immortal glory of the past generations to have made the Constitution a success hardly equalled by any other and certainly surpassed by none, the Constitution has to an incalculable degree been instrumental in rendering the people capa-

ble of doing it. To indulge in rash criticisms, paving the way for a spirit of impatient and venturesome innovation, is, therefore, no less a danger than erecting the Constitution into a fetish. To the happy blending of steadfast and conscious conservatism with determined, but level-headed and prudent progressiveness, as described by Madison in No. XIV of the *Federalist*, do the American people owe their greatness. If this ceases to be the distinguishing trait of the national character, the republic has passed its zenith and is gliding down on an inclined plane, though every year add a million to its inhabitants and a hundred millions to its wealth.

I am confident that to-day an overwhelming majority of the American people will still readily assent to these assertions. But is the number of those not increasing with alarming rapidity who, in one respect or another, do so only "in the abstract"—as they used to say in the old slavery days? To enumerate and discuss all these signs of the times would require days. I must confine myself to calling attention to but one—from certain points of view, in my opinion, the most characteristic as well as the most startling one.

Whether it be justified or not, it is an undeniable and patent fact that the federal Senate has of late years steadily lost ground in the public esteem. By the spectacle offered by it while the repeal of the purchasing clause of the Sherman law was at issue and by its attitude in regard to the revision of the tariff, with the incidental revelations, it has succeeded in arousing an odium, which at any previous period of the country's history would have appeared an utter impossibility. Not only individual Senators have been visited with the keenest censures, but the Senate has been held up by many writers as a fit object of indignation and contempt. Threats that, if it did not mend its ways, it would surely bring down upon itself the fate which would unquestionably overtake the British House of Lords in a near future, have not been uncommon. Others, remembering how difficult the Constitution rendered the fulfilment of this threat, have at least expressed a lively regret that this anachronism, bent upon becoming ever more and more a stupendous failure, could not be consigned to the historical lumber-room. Assuming that all these numerous writers really thought what they wrote, the academi-

cal expressions of their personal opinions would by this time certainly have taken shape in an earnest and systematic political agitation, if the formidable obstacle of the last clause of Article V of the Constitution was not in the way. But though the obstacle is formidable, it is not insurmountable. If ever a large majority of the American people should become fully convinced that the Senate ought to be abolished, this clause will not prevent its being done. In spite of the probable protests of the minority, the majority will then decide that the clause has no reference to this question, and if unanimity of the States be not required, an amendment to this effect could be carried like any other amendment. The clause does not impose the incubus of the Senate *in perpetuum* upon the American people. It merely renders a change of its composition practically impossible, while it is allowed to exist. *Sit ut est, aut non sit*, is the imperative decree. Whosoever is with Mr. Moncure D. Conway of opinion "that in our Senate are historically embodied the most antiquated principle of State sovereignty, . . . the 'rotten borough' principle, the peerage principle, and the base attempt to fetter posterity to these unrepugnant and irrational principles, by all of which the United States is held far behind Western Europe in constitutional civilisation," (*The Open Court*, March 15, 1894,) can therefore not consistently hold (with him) that "the entire abolition of the Senate 'does not come' within the range of practical politics." Irrespective of what the chances of success during his lifetime might be, he owes it to himself, as a good patriot, to exert himself to the utmost to have this vicious receptacle of "American snobbery" rased to the ground. Nor—as I shall try to prove later on—is the certainty of the futility of all such exertions for some time to come a valid reason for refraining from a serious examination of the question, whether he and those who more or less agree with him, are right in asserting that the Senate is a pernicious incubus fastened upon the republic by the shortsightedness, the narrow prejudices, and the self-seeking provincialism of the authors of the Constitution.

Logical gymnastics on the field of politics have been for generations the most keenly relished intellectual sport of the American

people, but as a rule their mistaking them for statesmanship has been merely apparent. They have been greatly prone to prop their eminently realistic statecraft with subtle theorising and displayed great skill in this not always harmless art. But their inborn realism and vigorous common sense have most effectively guarded them against allowing themselves to be wafted on by the treacherous winds of plausible theories. Unless they have sadly changed in this respect they will also, as to the question in hand, not accept as satisfactory an answer furnished by theoretical deductions and conclusions, but look squarely at the hard facts, remembering that "in political arithmetic, two and two do not always make four." (*The Federalist*, No. XXI.)

First in order among the pertinent facts stands the historical genesis of the Senate. Mr. Conway writes as to this :

"The Constitution of 1787 was really a treaty between thirteen sovereigns, the smaller empires refusing to unite unless their inherited supremacies were secured the power to overrule the voice of the nation. This was the real foundation of the Senate. But in the discussions of the Convention (1787) that doctrine of sovereignty . . . was veiled, though the veil was as discreditable as the motive concealed. The necessity being first of all to get the second Legislature established in the Constitution, it was done with an innocent air, and without discussion, on the mere statement that England had two Houses, and that two Houses had always proved favorable to liberty. . . . But worse remained. When the subject of disproportionate representation in the Senate came before the Convention, it was supported as a principle only [!] on the ground that in the British Parliament small places with little population were represented equally with the largest constituencies. . . . Furthermore, besides being 'in the European fashion' . . . it [the Senate] has been as a fashion repeated in all the States."

Mr. Conway is a historian and must be presumed to be familiar with the original sources bearing upon the subject. It would, however, be hard to find a more glaring perversion of the plain historical facts. That it is not a wilful falsification, goes without saying. Mr. Conway is one of those historians who, as to certain questions, are constitutionally unable to correctly see the contents of their documents. There is such a thing as historical color-blindness. Put any amount of green before them, to them it will be gray or red.

There was nothing whatever "veiled" about this question in

the Convention. The third of Randolph's "resolutions"—the first plan submitted to the Convention and furnishing the original basis for its discussions—read thus: "Resolved, that the national Legislature ought to consist of two branches." Randolph was a delegate of Virginia, at that time the foremost State of the Union. To suppose that his resolution concealed the sinister intention to clear the way for the "rotten borough system," is, therefore, to suppose a self-evident absurdity.—Article II of Charles Pinckney's plan, submitted the same day to the Convention, read thus: "The legislative power shall be vested in a Congress, to consist of two separate Houses; one to be called the House of Delegates, and the other the Senate." Pinckney was a delegate of South Carolina, and South Carolina also did not think so meanly either of her actual or of her prospective rank in the Union that she can be suspected of the clandestine purpose to prepare a snug berth for herself in the quality of rotten borough. In the committee of the whole, states Madison in his *Debates in the Federal Convention*, Randolph's third resolution "was agreed to without debate or dissent, except that of Pennsylvania,—given probably from complaisance to Dr. Franklin, who was understood to be partial to a single House of Legislation." (*Elliot*, V, 135.) Three weeks later Pennsylvania, too, gave in its adhesion. Thus, if Mr. Conway's assertions be true, we have the odd spectacle of *all* the States conspiring to "veil" their unanimous intention to smuggle into the Constitution "the rotten borough system," which the larger States afterwards so strenuously contended against. What strange things men will do, when they are pursuing "base" projects.

There is, in fact, but one veil in this case and that is drawn over Mr. Conway's eyes. He pins it to his cap with the erroneous assumption that the States have "as a fashion repeated" the federal Senate. That is hitching the cart before the horse. It is repeatedly and explicitly stated in the debates of the convention that it repeated the "fashion" set by all the States with the exception of Pennsylvania. "In two parts," said Mason of Virginia, "he was sure it (the mind of the people of America) was well settled,—first, in an attachment to republican government; secondly, in an attachment



to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted. This must either have been a miracle, or have resulted from the genius of the people." (*Elliot*, V, 216, 217.) Unquestionably the latter. "The bicameral system," writes Dr. Lieber, "accompanies the Anglican race like the common law." (*On Civil Liberty and Self-Government*, p. 197.)

*This* was and is the real foundation of the Senate: the conviction pure and simple—based not only upon the English precedent, but also upon their own experiences—that the bicameral system is preferable to the unicameral. To make the Senate besides a representation of Statehood was altogether an afterthought, gradually evolved by the necessity of a compromise between the large and the small States; and even then the Convention made it only the formative, but not also the really determinative principle, for it deliberately discarded its most obvious and most important logical consequence, the vote by States. According to Randolph's resolutions "the members of the second branch of the national Legislature" were "to be elected, by those of the first, out of a number of persons nominated by the individual Legislatures." In Pinckney's plan the Legislatures were not given any share in the formation of the Senate. It simply provided: "The Senate shall be elected and chosen by the House of Delegates."<sup>1</sup> But while—so far as we can learn from the extant sources—the thought of making the Senate a representation of the States as such was at first not entertained by a single member, several of the most prominent members strongly

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<sup>1</sup> The members of the House of Delegates Pinckney wished to have elected by the Legislatures. (*Elliot*, V, 163, 164.) See Madison's explanation of the discrepancy between this opinion and Pinckney's "Plan" (*ibid.* V, 578, 579). R. Sherman advocated the same idea, avowedly because of his distrust of the people. "The people," he said, "immediately, should have as little to do as may be about the Government. They want information, and are constantly liable to be misled" (*ibid.* V, 136). Don't let us judge him too harshly for that. Jefferson, "the father of American democracy," wrote to Madison (Dec. 20, 1787): "I like the power given the Legislature to levy taxes, and for that reason solely (!), I approve of the greater House being chosen by the people directly. For though I think a House so chosen, will be very far inferior to the present Congress, will be very illy qualified to legislate for the Union, for foreign nations, etc., yet this evil does not weigh against the good, etc." (*Jefferson's Works*, II, 328.)

emphasised from the outset, (1) that, as Madison expressed it, the Convention ought to adopt "the policy of refining the popular appointments by successive filtrations" (*Elliot*, V, 137); (2) that, as Randolph said, "the number of the second branch ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable" (*ibid.* V, 138); (3) that the representation in the two branches ought to be put upon an essentially different basis. As to the latter point, the prevailing opinion evidently was that the Senate should be more especially "the representation of property." (*Ibid.* V, 166, 247, 260, I, 507.) Gerry expressed the hope that the election of senators by the Legislatures would tend "to provide some check in favor of the commercial interest against the landed; without which, oppression will take place." (*Ibid.* V, 168.)

In the course of the discussions some zealous advocates of only one chamber arose. Their arguments, however, so far from calling for some restricting qualifications of the statements made before in regard to this question, only serve as a further corroboration of them. Roger Sherman and Luther Martin admitted that the bicameral system is the only proper one for a State. They insisted upon one chamber for the Union solely because they were opposed to its being transformed into a State in the true sense of the word, but wanted it to remain what it was under the Articles of Confederation—a mere confederacy. (*Elliot*, V, 218; I, 359, 360.)

They reasoned correctly. If the Union was to remain a confederacy a Legislature of two branches was not only useless, but utterly inadmissible. Though the members of the legislature of a confederacy be legislators in name and form and according to the letter of the law, to the extent that the confederacy is really but a confederacy they can be virtually only ambassadors. Ambassadors however, are bound to voice the mind of another. Therefore it would be strictly a *non sense* for the principal to appoint two sets of ambassadors. To say that the unicameral system would have been a necessity if the Union was to remain a confederacy, is, however, not to say that its introduction now would reverse the evolutionary process and re-change the republic into a mere confederacy. No

other change in the legal character of the bond of union being intended, exactly the opposite would necessarily ensue, after we have been over a century legally a nation and actually become so ever more and more. Complete consolidation would be the inevitable consequence, and complete consolidation is incompatible with the maintenance of liberty. They are grossly mistaken who suppose that the abolition of the Senate would only amend the Constitution. It involves in the strict sense of the word a *radical* change of it, i. e. its total subversion. The day on which the radical visionaries triumph, who see in the Senate a gangrenous ulcer on the body politic, will be the beginning of the end of the Republic.

That this change of the Constitution would necessitate a number of other far-reaching changes is easily proved. What, for instance, is to become of impeachments? If they are not to be done away with, another tribunal for trying them would have to be instituted. The former course would hardly be deemed advisable, though many will agree with the late Justice Miller that impeachment "as an efficient remedy must be conceded to be a failure." The same eminent jurist was of opinion that it "has, perhaps, operated as a safety-valve in cases of great popular excitement," (*Lectures on the Constitution of the United States*, page 25,) and that is certainly worth something. Greater difficulties would present themselves in regard to a much more important function of the Senate. Should the Executive be wholly liberated from the control now exercised by the Senate in regard to the management of the international relations? This would surely not be advocated by many. To transfer this function simply to the House of Representatives, all of whose members are elected anew every second year, would however be still less advisable.<sup>1</sup> Though *The Federalist* is over a hundred years old, it can still be studied with considerable profit by the wisest of us. The day on which the reasonings of its authors on this head fail to carry conviction to the American people,

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<sup>1</sup> "Foreign governments can never enter into any permanent arrangements with one whose councils and government are perpetually fluctuating. . . . Caprice is just as mischievous as folly, and corruption scarcely worse than perpetual indecision and fluctuation." (Story, *Commentaries*, § 717.)

would not deserve to be entered with red ink in their annals. These problems—and a considerable number could be readily added—suffice to show that the abolition of the Senate is too intricate a question to be satisfactorily disposed of in one column of a daily paper or even in twenty pages of a magazine. But though they are of no little consequence, they are after all only questions of detail, on which it is not necessary to dwell. If it can be proved that the abolition of the Senate would break down the very foundation of our whole political structure, nothing more is needed ; and I think this can be proved.

In the Senate, says Pomeroy, “have we fast anchored in our fundamental law the principle of local self-government.” (*An Introduction to the Constitutional Law of the United States*, page 121.) This principle is the vital force not only of Anglican, but also of Germanic liberty. Cease to guard and foster it, and the days of this liberty are as surely counted as a plant must wither and die, whose roots are cut off. Up to the days of the third republic, the French failed to realise that the prerequisite of liberty as to the State is local self-government. This was the main cause that, however heroic, their efforts to establish liberty were from the start doomed to be spasmodic and to run straight towards a disastrous reaction. The “liberty trees” they planted were no trees at all, but rootless poles.

But, it will be said, to treat Americans to these hackneyed truths is to carry owls to Athens. Though it must be admitted that in the Senate the principle of local self-government is anchored fast in our fundamental law, it is manifestly preposterous to assert that by the abolition of the Senate this principle would be swept from the American continent into the ocean. True enough. Only do not forget that the history of empires abounds with instances of forms allowed to remain intact and the spirit driven out of them as thoroughly as if they had never harbored so much as the shadow of any spirit. Rome still had its consuls and its senators when the Cæsar’s horses could aspire to these dignities. And a federal legislature of only one chamber is certain to prove a besom of steel wire as to the sweeping out of the spirit of true local self-government.

Will it be asserted that this is idle croaking, because England, the mother country of this Republic, has practically but one legislative chamber, and local self-government as well as liberty are housed safely enough in the British Isles? I ask in reply, is there any analogy between those dots in the ocean and this continent, whose inhabitants, composed of nearly all the races of the earth, are sure to be counted by hundreds of millions within the lifetime of more than one baby of to-day? Besides, as to one most essential respect, it is not true that England has practically but one legislative chamber. If the lords are good for nothing else, they render Great Britain the eminent service of having it in their power at any moment to compel the House of Commons and the English people to bethink themselves, to take time, to give "the sober second thought" a fair chance to assert itself. Read the debates of the federal convention and of the ratification conventions and *The Federalist*, and you will soon find out whether this was not one of the most essential functions, nay, pre-eminently *the* function assigned by the fathers of the Constitution to the Senate. Moreover, up to a recent date the character of the English government has been essentially aristocratic. How the old machinery of its so-called Constitution will work in the long run after thorough democratisation, is a question for the future to answer. Thus much, however, is revealed very clearly already, that things will not go on so smoothly as they have done heretofore. In many respects the value of the older political experiences of England as political lessons in the sense of precedents to be relied upon diminishes steadily and rapidly. As to the question in hand, there are other historical precedents available, which are more to the purpose and more instructive.

Is it an accident that, as Dr. Lieber says, "no one attempt at introducing the unicameral system, in larger countries, has so far succeeded? France, Spain, Naples, Portugal,—in all these countries it has been tried, and everywhere it has failed." (*On Civil Liberty and Self-Government*, page 197.) I admit that this is partly attributable to the peculiar character of these nations. But that they preferred the unicameral system is chiefly due to a particular trait of their character, and the unicameral system would, so to say, by

main force, inoculate this trait into the American character, and, though the American character is naturally strongly averse to it, the virus would in the nature of things work its way into the whole system and every year gain in potency.

“The idea of one house,” says Dr. Lieber in the paragraph quoted before, “flows from that of the unity of power, so popular in France.” Unity of power, however, is incompatible with liberty. Whether it be lodged in one, some, or all, makes no difference, or rather the larger the number with whom it rests, the greater the incompatibility, because the sense of personal moral responsibility is correspondingly blunted. To deny this incompatibility is to contend that there is no necessity for human nature to assert itself in human affairs. It is a gross fallacy that governmental powers, which are liable to abuse, ought not to be suffered, for the conception of society presupposes governmental powers and governmental powers not liable to abuse is a contradiction in terms. But it is a still grosser fallacy that unity of power is an irrefragable logical conclusion of the doctrine of popular sovereignty. Whoever says people, says organisation ; whoever says organisation, says complexity ; whoever says complexity, says division of energy. Power is real power only to the extent that it can become active. The people are the source of all power, but they do not from choice only refrain from vitalising the power in such a manner that there is actually unity of power ; the nature of things renders it impossible. If it were possible, the doing it would be in itself the dissolution of society, for there would be no more organisation.

But however that be, the size of modern States has rendered democracies in the strict sense of the word impossible. Whether the people like representative government or not, they have no choice. But if this be so, what does the unity of power then signify, if not that the people deliberately set a master over themselves? “By no means,” the radical visionary will reply ; “the representatives have of course to voice the will of their constituents.” I ask : shall they be real representatives or merely phonographs? If the latter, Dahomey might be a more eligible country to live in than the United States. Besides, we are here again confronted by phys-

ical impossibilities. The people are able to make their will known to the extent of electing a Democrat, a Republican, or a Populist, and bidding them work for tariff reform or protection, for free coinage of silver or the gold standard, and so forth. But how about the details of which all legislation necessarily consists? As to these the will of the constituents cannot be ascertained. It is true, many newspaper-editors always know exactly what it is. The trouble, however, is that rarely any two of them agree.

“Granted as to the difficulty about the details,” my imaginary opponent will say; “but that cannot be decisive, for at the next election the people will make known in no uncertain way, whether the representative has done what they wanted him to do.” People who are perverse enough to think that in the elections they are frequently confined to a choice between evils will not derive from this as much consolation as our theorist. But apart from that. How about the mischief done in the mean time by the passing of laws calculated or even intended to render the Legislature the master of the people? The laws can be repealed, but the harm they have wrought, is done. An ounce of prevention is better than a pound of cure. This old English proverb contains the larger and better half of all true political wisdom.

“Ah, there I have you,” I expect my friend to say. “Your democracy is of a very flimsy kind. You have no faith in the people. If the fountain be pure, the water in the river will run clear.”

Yes, you have got me, but with me you have got the authors of the Constitution, the fathers of the country. In the sense you imply the fountain is not, never has been, nor ever will nor can be, pure; and you propose systematically and with ever increasing vigor to stir up all there is of sand and mud in it.

“It is an unquestionable truth,” said Hamilton in the ratification convention of New York, “that the body of the people, in every country, desire sincerely its prosperity; but it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they are frequently led into the grossest errors by misinformation and passion,

would be a flattery which their own good sense must despise." (*Elliot*, II, 302.)

"Oh, Hamilton, the monarchist!" That would probably be all the answer vouchsafed to this quotation. Well, if the country had never had worse Republicans than Alexander Hamilton, its records would well bear inspection. But let us hear Madison, who was never suspected of being a monarchist. He said: "In order to judge of the form to be given to this institution (the Senate), it will be proper to take a view of the ends to be served by it. These were, first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led." (*Elliot*, V, 242.)

Since when has it become a political heresy in this country that the people ought to protect themselves against their rulers? Or have we relapsed into the old puerile notion that only from the Executive any dangers are to be apprehended? "The Executive, in our governments," wrote Jefferson, March 15, 1789, to Madison, "is not the sole, it is scarcely the principal object of my jealousy. The tyranny of the Legislatures is the most formidable dread at present, and will be for many years." (*Jefferson's Works*, III, 5.) The most ruthless tyranny recorded in history was exercised in France by the Convention under the lead of the Terrorists. But nothing could be further from the truth than to suppose that the majority of the members of the Convention or even but a very considerable part of them were fiends. Because they were *men* they were driven by the terrible circumstances, partly bequeathed to them by the past and partly of their own creating, to act as if they were devils. *Men* also our representatives must of necessity be, and though individuals might successfully resist the current that would be created by our becoming converts to the doctrine of the unity of power, a numerous body of men could not do so for any length of time; though every single member were a Solon and Aristides combined, their joint weight would force them to drift with it, and drifting with it they would be compelled by their very weight to let themselves be carried along by it with ever increasing velocity. "To check the inherent bent of every government towards the dominant form im-



pressed upon it,"<sup>1</sup> Mirabeau declared to be one of the principal tasks of true statecraft, and the history of the French Revolution from its first to its last page is one continuous corroboration of this assertion written in letters of blood and living fire. Unchecked radical democracy, however, would be the dominant form impressed upon our government by the adoption of the unicameral system; and from the day of its adoption the history of the United States would, therefore, become a fearfully impressive sermon upon the text that "lead us not into temptation" is the prayer of prayers, of which legislative bodies and nations stand even infinitely more in daily need than individuals. The Legislature and the people would mutually push each other on in the mad race on the inclined plane. The Legislature could not check itself, though it were ever so willing and anxious to do so; the people would prevent its doing it. If the fathers of the country had reason to fear "the turbulence and follies of democracy" and "the mischievous influence of demagogues" (*Elliot*, V, 138), surely we have ampler reasons to beware of them and throw up ramparts against them. All over the Christian world the modern economical evolutions have ploughed the ground for them to the very bed-rock. The delusion of the omnipotence of legislation—the deadliest bane of liberty and all sound progress—is getting more and more rampant. Look at our Populists, at our Coxeyites, and you will be in no doubt as to whether we are exempt from the epidemic. Already hundreds of thousands of our citizens keep their hot eyes riveted upon Washington, the Mecca whence all blessings can come and must be made to come. Simplify legislation by entrusting it to one body, and the devout pilgrims will swarm to it—bodily or in the form of petitions, resolutions, platforms—like clouds of locusts. Remember, then, that already years ago the Grand Master of the Knights of Labor was invited kindly to favor Congress with his views on the best manner of solving the social problem, and that there were this year members of Congress advocating that the Coxeyites should be granted a deferential hearing, and go over the pages of the statute books—

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<sup>1</sup> Méjan, *Collection complète des travaux de Mirabeau*, III, 366.

federal and State—and you will get no uncertain answer to the question, whether or no the pilgrims will know how to make themselves heard.

Nor could all the other provisions and checks of the Constitution afford us any adequate protection. If ever a political truth was proclaimed, Gouverneur Morris uttered it when he wrote to Timothy Pickering (December 22, 1814):

“ But, after all, what does it signify that men should have a written constitution, containing unequivocal provisions and limitations? The legislative lion will not be entangled in the meshes of a logical net. The legislature will always make the power which it wishes to exercise, *unless it be so organised as to contain within itself the sufficient check. Attempts to restrain it from outrage, by other means, will only render it more outrageous.*” (Elliot, I, 507.)

The veto-power of the President would soon only render bad worse. It would be extinguishing a fire by screwing the hose of the engine to an oil-tank. Strife between the two powers would be the regular order of the day, as it was in the French Revolution, unless they pulled at the same rope, and then they would pull the republic only all the faster over the brink of the precipice. A “fatal conflict,”<sup>1</sup> or as fatal a co-operation, would soon be the only alternative.

“ Tripartite division in the power of legislation—so at the time wrote Madison, so thought all the great builders of the Constitution, so asserted John Adams with vehemence and sound reasoning—is absolutely essential to the success of a federal republic; for if all the legislative powers are vested in one man or in one assembly, there is despotism; if in two branches, there is a restless antagonism between the two; if they are distributed among three, it will be hard to unite two of them in a fatal strife with the third.” (Bancroft, II, 328.)

He who demurs to this statement of Bancroft reads the history of the United States with eyes that would blot the sun from the skies, because it has spots.

The political physicians, who propose to deliver us from our ailments by the abolition of the Senate, imitate Dr. Eisenbart, of the German student's song, curing toothache most effectively forever and a day by cutting the patient's head off. And their methods bear even a much closer resemblance to those of their famous prototype.

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<sup>1</sup> Bancroft, *History of the Formation of the Constitution*, II, 16.

He made the blind walk again, and restored the eyesight to the lame. That is exactly what they propose to do, and it is mainly for this reason that a serious discussion of the question is imperatively called for, though it is an absolute certainty that for many a year to come their recommendations will not be acted upon.

It is not the first time that the Senate has been complained of. Even the very charge, which is now for nearly a year running every day through the press, was brought against it exactly a century ago by Jefferson. "The failure of the Non-importation Bill" in the Senate caused him to write on May 15, 1794, to Madison:

"This body was intended as a check on the will of the Representatives when too hasty. They are not only that, but completely so on the will of the people also. . . . It seems that the opinion is fairly launched into public that they should be placed under the control of a more frequent recurrence to the will of their constituents. This seems to be requisite to complete the experiment, whether they do more harm or good." (*Jefferson's Works*, IV, 107.)

Whether anger did not make him see more than there was, and whether the Senate had in this case acted unwisely, need not here be examined. That many of the exceptions taken to its course in later years were not without foundation, will not be denied. In spite of that, however, three generations have been practically unanimous in thinking that, taking all in all, Judge Story was right when he wrote:

"It has not only been demonstrated (by experience) that the Senate, in its actual organisation, is well adapted to the exigencies of the nation, but that it is a most important and valuable part of the system, and the real balance-wheel which adjusts and regulates its movements." (*Commentaries*, § 702.)

Unless three generations have been egregiously incompetent to form an intelligent opinion of their own interests, it has, therefore, been irrefutably proved that, upon the whole, the *institution* was well devised. In other words: the evils we complain of cannot be justly chargeable to the *institution*, and, consequently, they cannot be cured by abolishing the *institution*. There is no more sense in holding the fathers of the Constitution responsible for it that the Senate has of late been deteriorating to an alarming degree, than there is in bringing a suit against a physician for the sickness brought about by

combining the treatment prescribed by him with the deleterious positions of half a dozen ignorant and unscrupulous quacks. The decline of the Senate is undoubtedly the cause of most serious evils, but this decline is itself a symptom and the result of causes lying outside of and deeper than the Constitution.

"No amount of wisdom in a Constitution," says Justice Miller, "can produce wise government, unless there is a suitable response in the spirit of the people." (*Lectures on the Constitution*, p. 32.) And Story writes: "Private and public virtue is the foundation of republics; and it is folly, if it is not madness, to expect that rulers will not buy what the people are eager to sell. The people may guard themselves against the oppressions of their governors; but who shall guard them against their own oppression of themselves." (*Commentaries*, § 719.)

Let these wise and profound truisms be pondered well by those who think they can lift the Senate again to its former intellectual and moral level by transferring the election of senators from the Legislatures to the people. I do not mean to express myself adversely to this change. But while I admit that it may tend to mend matters somewhat, I am very sure that it cannot effect a real cure of the evil. The advocates of this change are not liable to a grave charge that has to be brought against the radicals, whose virtuous indignation over the shortcomings of the Senate pushes them to the extreme of preaching, that there is no cure,—that the people will have to bear the evil and grin, if they either cannot or will not consign the Senate to the things of the past. The latter are betrayed by their ill-advised patriotic ardor into spending the strength, which might and ought to be devoted to breaking the ground for genuine reforms, in attempts to switch off public opinion on to a track leading straight on to disaster. The former are exerting themselves in behalf of what may unquestionably turn out to be a reform. Still there is at least great danger that they too will mislead public opinion by—wittingly or unwittingly—making it believe that what can at best be a reform, will be a cure. If they do that, they will have wrought more harm than good, for what is needed first and above

all is the opening of the eyes of the people to the true nature and the real causes of the evil.

To contend in the face of the Senate's record for three generations that the election of senators by the State Legislatures had necessarily to prove a failure, is manifestly absurd. If the Legislatures have of late so frequently failed to elect men of the proper stamp that the general character of the Senate has thereby been seriously lowered, the Legislatures must evidently have deteriorated. That a spreading and progressing deterioration of the State Legislatures must affect the nation's life as injuriously as the deterioration of the federal Senate, is, however, self-evident, though Judge Story is unquestionably right in saying: "There is probably no legislative body on earth whose duties are more various and interesting and important to the public welfare, and none which calls for higher talents and more comprehensive attainments and more untiring industry and integrity." (*Commentaries*, § 707.) And as the people can elect to the State Legislatures whomsoever they see fit, it is as incontestable that the people are at fault, if there be a spreading and progressing deterioration of the State Legislatures. Therefore to scold the Senate for being, intellectually and morally, so much below its task, and the State Legislatures for not electing the proper sort of men, is but to denounce the symptoms of the disease. No disease has ever been cured by doing that, and this must be aggravated by it, for it averts the people's attention from the true causes and unless these are fought unremittingly and energetically, they *must* go on gaining steadily and rapidly in potency. It is not only impossible to stamp out the disease, but it must eat its way ever deeper into the very vitals of the republic, so long as the people are lacking either the discernment or the moral courage to lay the blame where it really belongs—at their own door.

To say that the responsibility ultimately rests with the people is, however, to say also that in the nature of things there can be no specific remedy. Specific measures cannot only be helpful, but they are absolutely indispensable. In politics the faith-cure system never works. Though private and public virtue is undoubtedly the foundation of republics, the mere preaching of the necessity of private

and public virtue is not only unavailing, but very apt to work as a benumbing opiate. Definite measures are needed to bar the way to evil tendencies and noxious influences, to stimulate the activity of the vital energies, and to fight the symptoms, which become themselves causes of derangement if they be left unchecked. But if the disease is of long standing and complicated, and if it has affected the whole system, only the veriest quack can believe for a moment that all that is required is to apply some nostrum. Nothing but the removal of all the causes will do and that requires time, patient and persistent work, much deliberation and even experimenting, and a great deal of moral courage and self-abnegation. To keep a great democratic republic hale and sound or to restore it to health if it be diseased, is not so simple and easy as many people—to judge from their talking and still more from their acting—seem to think. It cannot be done either by shouting “hip, hip, hurrah!” or by looking contemptuously and pityingly at “effete monarchies” and praying: “We thank Thee, God, that we are not like these publicans.” It is the most arduous task any nation can be put to and it must grow every day more arduous and more difficult, if the problem is not satisfactorily solved every day. In a democratic republic less than under any other form of government is there such a thing as a stand-still; onward and upward, or backward and downward—there is no other possibility. The fathers of the country and the authors of the Constitution have bequeathed us not only a splendid heritage, but also an awful trust and a fearful responsibility. Let us beware lest we shall stand branded, as they stand exalted in the annals of mankind.

Let us not turn pessimists—we have no reason to. But let us not be optimists either, wafting on in a self-complacent *dolce far niente*; they are an even more harmful set than the lugubrious croakers. Let us be, what we ought to be—true patriots, looking the facts square in the face in order to do—each of us—our fair share in honestly, vigorously, and hopefully fighting the deeper causes, of which the eclipse of the Senate is but one effect—the evils, with which it stands not only in close, but in organic and genetic connexion.